THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.857 of 1995

Dated: 08.08.2006

Between
The Management of Singareni Collieries
Co. Ltd., Sreerampur (Projects) Area,
Rep., by its General Manager.

…..Petitioner

and

1.The Industrial Tribunal-I, Chandra Vihar,
M.J.Road, Hyderabad, rep., by its Presiding Officer
and another.

….Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.857 of 1995

ORDER:

This writ petition is filed by the Management of Singareni Collieries Company Limited, Sreerampur (Projects) Area, represented by its General Manager, seeking Certiorari to call for the records relating to M.P.No.3 of 1992 dated 15.9.1994 on the file of the 1st respondent and quash the same.

It is the case of the petitioner that the 2nd respondent is an employee and while he was working as Coal Filler at Ravindra Khani No.8, Incline, Sreerampur, issued with a charge sheet No. RK-8/5/91/1737 dated 26.7.1991 by registered post with acknowledgment due, for his misconduct under Company's Standing Order No.16 (16). But, it was returned undelivered by the Postal authority. As such, the charge sheet cum enquiry notice was published in a local Telugu Daily Newspaper "Eenadu" dated 10.11.1991 asking him to submit his written explanation within 3 days from the date of publication and to attend for an enquiry on 22.11.1991. Neither he submitted his explanation nor attended the enquiry. Hence, enquiry was conducted exparte on the basis of the evidence available on record, wherein he was found guilty and he was imposed with punishment of dismissal from service on 31.1.1992. Since Industrial Dispute in I.D No.10 of 1989 was pending, a petition under Section 33 (2) (a) (b) of the Industrial Disputes Act (for

short 'the Act') was filed for approval of the action while tendering one month wage to the 2nd respondent. Since the opposite party has not attended for duty till the date of dismissal i.e., 31.1.1992, the above amount was sent by money order to his address. The domestic enquiry file relating to the dismissal of the 2nd respondent was placed before the Tribunal for perusal. The Tribunal after due consideration of the matter firstly found that the notice as required under the Act was not served on the R2 and it was not sent to his previous address as available in the records of the company. However, while dealing with the matter, the Tribunal has examined as to whether the Management has fulfilled the conditions as required under Section 33 (2) (b) of the Act, and the documents Exs.P1 to P140 filed by the petitioner. Except these exhibits P1 to P140, no document is filed to show that the petitioner-Management has sent or tendered one month's wage in lieu of notice. When once one month wage is not paid to the respondent, the petition under Section 33 (2) (b) fails. Thus, on the technical ground the petition was dismissed. Aggrieved by the same, the writ petition has been preferred.

Learned counsel for the petitioner strenuously contended that the very application filed under section 33 (2) (b) of the Act along with original MO receipts 1823 and 1824 dated 31.1.92, seeking permission of the Tribunal indicates that one month wage was sent to the 2nd respondent along with the dismissal order dated 31.1.1992. This is sufficient compliance of the provisions under Section 33 (2) (b) of the Act. This was not looked into properly by the Tribunal below. Apart from that, it gave a vague finding that the notice of enquiry was not served on the R2

properly.

Be that as it may, the application seeking permission under Section 33 (2) (b) of the Act itself mentions as to sending of one month salary under receipt Nos.1823 and 1824 dated 31.1.1992.

I am of the considered opinion that the matter requires fresh consideration by the Tribunal. Therefore, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remitted to the 1st respondent for fresh consideration on all the issues. The Tribunal shall permit all the parties to adduce evidence if necessary, and dispose of the matter within a period of three months from the date of receipt of a copy of this order, after putting all the parties on notice. No costs.

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08.08.2006

rkk